

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9832 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAJU PARSHOTTAM CHAWAN (MARATHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

Mr. K.T. Dave, A.P.P. for respondents nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Satish R. Patel for the petitioner and learned A.P.P. Mr. K.T. Dave for the respondents nos.1, 2 and 3.

The petitioner has filed the present petition under Article 226 of the Constitution of India with a prayer for appropriate writ or direction to quash and set

aside the order of detention dated 7-10-1998 passed by the respondent no.-1-Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred by Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

The petitioner has also prayed for his liberty forthwith.

The impugned order, the committal order and the grounds of detention are produced on record vide Annexures "A", "B" and "C" respectively of the compilation.

Perusal of the grounds of detention discloses the fact that Prohibition Case vide CR no.226/98 was registered at South Zone Prohibition Station on 5-10-1998 against the petitioner for the offences made punishable under Bombay Prohibition Act and countrymade liquor of 1500 litres alongwith one Tata Sumo car were seized. The matter is pending investigation.

Over and above the above stated Prohibition Case filed against the petitioner, two witnesses on assurance of anonymity have given information against the petitioner about his antisocial activity. The statements of said witnesses were recorded on 15-9-1998 and 10-9-1998 respectively. The Police Commissioner, Ahmedabad as detaining authority after having construed the papers of the Prohibition Case filed against the petitioner; having verified the statements given by the witnesses as also the fact that said witnesses were afraid of the petitioner if their identity is disclosed has arrived at the conclusion that the magnitude and gravity of the bootlegging activity of the petitioner is of such an extent which prejudicially affect the maintenance of public order and resort to general law is insufficient to prevent the petitioner from indulging into such activity. The detaining authority having claimed privilege under Sec.9(2) of "PASA" in respect to information supplied by the witnesses have recorded the satisfaction that, in the instant case, it is necessary to detain the petitioner to prevent him from further indulging into antisocial activity of bootlegging.

It has been submitted on behalf of the petitioner that the petitioner vide his representation dated 28-7-1999 addressed to the Deputy Secretary, Home Department, State of Gujarat sent by registered A.D. post (copy of which is produced on record at Annexure I) of the compilation has claimed copies of statements of

witnesses, namely, P.I. C.T. Suthar, S.P. Travad. Police Constable N.B. Barot, Rajnikant Dhyabhai Deepak Shabrao etc. and also report of chemical analyzer in respect to offence registered against the petitioner.

It has been submitted at the Bar that though the representation of the petitioner has been received by the competent authority on 30-7-1999, the reply is sent only on 6-8-1999 wherein it is stated that the representation dated 28-7-1999 has been rejected. The learned Advocate for the petitioner further submitted that the report of chemical analyzer had been annexed with the said reply, however, he has urged that said reply is silent about supply of copies of statement of witnesses recorded by the Investigating Officer as claimed vide representation dated 28-7-1999 which prevented the petitioner from making effective representation against his illegal detention, and thereby, valuable fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution have been violated and the continued detention of the petitioner has become illegal.

Learned Advocate Mr. K.T. Dave relying on the affidavit-in-reply filed on behalf of the respondent no.1 has submitted that as the detaining authority has not relied on the statement of witnesses which are claimed by the petitioner, the petitioner is not entitled to the copies of the said statements, and as such, the impugned order cannot be said to have been vitiated; nor the continued detention of the petitioner could be said to be illegal.

In the instant case, it is difficult to uphold the submission urged on behalf of the respondent. The affidavit placed on record does not indicate that copies of the statements of witnesses claimed by the petitioner vide representation dated 28-7-1999 has not been recorded by the Investigating Officer or were not in existence on the date of impugned order. If the petitioner-detenu has considered the contents of the said documents necessary for reference to make effective representation against his detention, that being the constitutional guarantee by way of safeguard provided under Article 22(5) of the Constitution of India, the authority has to comply with the same and non compliance would certainly vitiate the continued detention of the detenu.

This Court while deciding Spl.C.A. no.2080/93 on 22nd August, 1994 (Coram: B.S. Kapadia & N.J. Pandya,JJ.) have expressed the similar view following the authoritative statements made by Apex Court in various

decisions and has held the continued detention as illegal. Following the said view, in the instant case, the petition deserves to be allowed.

As a result of the foregoing discussion, the petition is allowed. The impugned order dated 7-10-1998 passed by the respondent no.-1-Police Commissioner, Ahmedabad City against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu- Raju Parshottam Chawan (Marathi) is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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